

# EXHIBIT 17

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UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MASSACHUSETTS

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IN RE: PHARMACEUTICAL : MDL NO. 1456  
INDUSTRY AVERAGE WHOLESALE : CIVIL ACTION  
PRICE LITIGATION : 01-CV-12257-PBS  
THIS DOCUMENT RELATES TO : U.S. ex rel.  
Ven-a-Care of The Florida : Judge Patti B. Saris  
Keys, Inc. :  
v. :  
Abbott Laboratories, Inc., : Chief Magistrate  
No. 06-CV-11337-PBS : Judge Marianne B.  
- - - - -x Bowler

THOMAS A. SCULLY - VOLUME II

JULY 13, 2007

WASHINGTON, DC

(CAPTION CONTINUED)

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| <p style="text-align: right;">Page 492</p> <p>1 the number was the actual average of the prices<br/>2 at which that drug was sold to customers?<br/>3 A. Yeah, I think early on in this debate,<br/>4 when I first got involved, in the early '90s,<br/>5 people actually argued that's what they were<br/>6 doing.<br/>7 Q. And who was that?<br/>8 A. Oh, I don't remember. I mean, I've<br/>9 been involved with this for years. I'm saying<br/>10 generally there were policy arguments. When I<br/>11 first got involved in this, in the early '90s,<br/>12 AWP was what we actually pay, and an average of<br/>13 our prices, and I just don't think -- in some<br/>14 cases it may well have been, but in most cases,<br/>15 it wasn't.<br/>16 And obviously Medicare pays for<br/>17 thousands of drugs, and the vast bulk of the<br/>18 policy discussion there was centered around<br/>19 probably 25 or 30 high volume ones. And in most<br/>20 of those cases that's not what was happening.<br/>21 Q. And so you're saying that these were<br/>22 manufacturers who were arguing that AWP was the</p> | <p style="text-align: right;">Page 494</p> <p>1 MR. GOBENA: Objection to form.<br/>2 A. I can't recall a single person, but<br/>3 those arguments were made, I'm confident of that.<br/>4 Q. On the other hand, virtually everybody<br/>5 with whom you've spoken, refers to Average<br/>6 Wholesale Price as the price that was published<br/>7 in the Redbook; correct?<br/>8 MR. GOBENA: Objection to form.<br/>9 A. Yeah, the debate in the early '90s,<br/>10 which I'm sure you're trying to get into, when we<br/>11 were trying to figure out whether we should pay<br/>12 95, or I think the first effort, back when Gayle<br/>13 Wollenski was -- and I believe back when Gayle<br/>14 Wollenski was running HCFA, again, this was a<br/>15 long time ago, by the way, she cut it from 95<br/>16 percent to 90 percent AWP or 85 percent, was that<br/>17 AWP was, in fact, some, in some bulk way, an<br/>18 accurate mechanism to reflect what somebody was<br/>19 actually paying. And whether it was 85 or 90 or<br/>20 95 was a legitimate debate.<br/>21 And my opinion the reality was that the<br/>22 actual number was air, something somebody could</p> |
| <p style="text-align: right;">Page 493</p> <p>1 average price?<br/>2 A. I don't remember the specifics. I<br/>3 remember I was involved for a long time,<br/>4 including as a hospital guy. And I would have<br/>5 people argue and tell me I should go argue for<br/>6 them, that this really is an average price, it's<br/>7 a legitimate number.<br/>8 So, I can't remember the details of<br/>9 who. I can just tell you that I was involved in<br/>10 all angles of this policy argument for many<br/>11 years. And one of the reasons I got so fired up<br/>12 about it is because I ran a big hospital<br/>13 association and I saw the other side of it.<br/>14 I don't blame anybody for doing what<br/>15 they did. The government created stupid<br/>16 incentives. But it was an insane policy. And<br/>17 so, understanding it from both sides, I was<br/>18 determined to fix.<br/>19 Q. But, just so we're clear, you can't<br/>20 name a single person who has ever used Average<br/>21 Wholesale Price in that way, that is, to refer to<br/>22 an actual mathematical average of prices?</p>     | <p style="text-align: right;">Page 495</p> <p>1 make up. So you could pick one percent and<br/>2 people were just going to jack up the number and<br/>3 do a lower percentage.<br/>4 So was there a debate, at one point,<br/>5 that AWP was a legitimate number? I have no<br/>6 doubt, 15 years ago, that was the case. I think<br/>7 as more and more people got into the weeds on<br/>8 this they understood it was a generally made up<br/>9 number.<br/>10 Q. And at the time when your opinion was<br/>11 that it was, as you say, a made up number, full<br/>12 of air, you were the senior person for healthcare<br/>13 at the office of management and budget; is that<br/>14 correct?<br/>15 A. And in the White House.<br/>16 Q. In the White House?<br/>17 A. Over the last year.<br/>18 Q. And you participated in this debate?<br/>19 A. It was a different debate, but yes.<br/>20 Q. That is, the debate about what the<br/>21 regulations should reflect, in 1991, about what<br/>22 Medicare should pay for Part B drugs; correct?</p>   |

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| <p style="text-align: right;">Page 768</p> <p>1 Medicare, you pointed out, it's Medicare plus the<br/>2 beneficiaries copay included.<br/>3 Q. And then finally the median VA price<br/>4 was 39 cents, and again, Medicare was paying<br/>5 about 8.5 times more than that, for the same<br/>6 drug, for a spread of about 850 percent; correct?<br/>7 A. Yes.<br/>8 MR. GORTNER: I have no further<br/>9 questions. John, as always, I am going to reserve<br/>10 my rights to re-depose Mr. Scully when our case,<br/>11 the Roxane case, is entered. Hopefully I won't<br/>12 have to, but I'm reserving all rights for that.<br/>13 MR. NEAL: Understood. Mr. Haas, are<br/>14 you prepared to proceed?<br/>15<br/>16 EXAMINATION BY COUNSEL FOR<br/>17 BRISTOL-MYERS, SQUIBB<br/>18 BY MR. EDWARDS:<br/>19 Q. Hi, Mr. Scully, I'm Steve Edwards,<br/>20 Hogan and Hartson. I represent Bristol-Myers<br/>21 Squibb.<br/>22 A. Okay.</p>  | <p style="text-align: right;">Page 770</p> <p>1 A. Yes.<br/>2 Q. Now, did CMS have any regulations<br/>3 regarding the reporting of list prices by drug<br/>4 manufacturers?<br/>5 A. I don't believe so. I think the<br/>6 instructions were the carriers to use common<br/>7 compendia to figure out what those list prices<br/>8 were.<br/>9 Q. And would you agree with me that a -- a<br/>10 -- a list price, by definition, does not include<br/>11 discounts?<br/>12 MR. NEAL: I'll object to the form. You<br/>13 can answer.<br/>14 A. I would assume that a list price does<br/>15 not include discounts.<br/>16 Q. Okay. And, indeed, this document<br/>17 states that the list prices for the products<br/>18 listed herein may not reflect actual Bristol-<br/>19 Myers Squibb sales prices, certain multi source<br/>20 products are always sold at a lower special offer<br/>21 price, or at lower special offer prices.<br/>22 All products may be subject to</p> |
| <p style="text-align: right;">Page 769</p> <p>1 Q. Now, on the first day of your<br/>2 deposition you testified that it was your<br/>3 understanding that the manufacturers report AWP<br/>4 to the Redbook; do you recall that?<br/>5 A. Yes, generally, yes.<br/>6 Q. Okay. And did you know that my client,<br/>7 Bristol-Myers Squibb, has never reported AWP<br/>8 to the Redbook or any other publication?<br/>9 A. I did not know that.<br/>10 Q. Let me show you a document that has<br/>11 been previously marked as Exhibit Luka 025 to the<br/>12 Luka deposition?<br/>13 A. For the record, this is a communication<br/>14 from Bristol-Myers Squibb, to Redbook, dated June<br/>15 5th, 2003, relating to the drug Paraplatin, and<br/>16 it bears the Bates stamp Redbook 06496, it was<br/>17 produced by Redbook.<br/>18 Now, this document communicates a list<br/>19 price; is that correct?<br/>20 A. I'm assuming it does, yes.<br/>21 Q. Well, it says, has the name of the<br/>22 drug, and then it has a list price; correct?</p> | <p style="text-align: right;">Page 771</p> <p>1 negotiated discounts, rebates, and charge backs;<br/>2 is that correct?<br/>3 A. Yes.<br/>4 Q. Now, in your view, did BMS do anything<br/>5 wrong when it communicated this information to<br/>6 Redbook?<br/>7 MS. CONNOLLY: Object to the form.<br/>8 MR. NEAL: Object to the form.<br/>9 A. I would assume that Redbook generally<br/>10 gets their pricing through communications through<br/>11 the companies.<br/>12 Q. And is there anything wrong with a<br/>13 company like BMS communicating a list price to<br/>14 Redbook?<br/>15 MS. CONNOLLY: Objection to form.<br/>16 A. My understanding is that's how they get<br/>17 their pricing from the company. So I would<br/>18 assume it's a fairly common procedure.<br/>19 Q. Now, on the first day of your<br/>20 deposition, you also talked about manufacturers<br/>21 raising AWP to generate volume.<br/>22 And at one point you cited Taxol and</p>            |

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